



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
	)	ISCR Case No. 21-00414
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Brittany White, Esq., Department Counsel  
For Applicant: *Pro se*

02/13/2023

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant has well over \$100,000 in federal student loans for which she has not established a reasonable plan to address. She did not provide sufficient information and documentation to mitigate financial considerations security concerns. Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on April 3, 2020, in connection with her employment. On December 17, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued Applicant an SOR detailing security concerns under Guideline F (financial considerations). The CAF issued the SOR under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on December 13, 2021, and requested a hearing before an administrative judge. The case was assigned to the DOHA hearing office on February 23, 2022, and assigned to me on September 6, 2022. On September 30, 2022, DOHA issued a notice scheduling the hearing for October 17, 2022, by video-teleconference through an online platform.

The hearing convened as scheduled. At the hearing, Department Counsel offered documents that I marked as Government Exhibits (GE) 1 through GE 5. Applicant testified and offered one document, Applicant Exhibit (AE) A. All of the exhibits were admitted without objection. At the end of the hearing, I held the record open until October 31, 2022 to provide Applicant the opportunity to submit additional information. Applicant submitted numerous documents by the deadline and indicated that some were outstanding, so I left the record open for additional submissions. She submitted those materials on November 14, 2022, and I closed the record on that date. Applicant's post-hearing submissions, marked as AE B through AE P and referenced below in the Facts section, are all admitted without objection. DOHA received the hearing transcript (Tr.) on October 27, 2022.

### **Findings of Fact**

In Applicant's answer, she admitted the six debts alleged in the SOR at ¶¶ 1.a-1.f. Her admissions are included in the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits, I make the following findings of fact.

Applicant is 52 years old. She has earned a bachelor's degree, a master's degree in business administration (MBA), and a teaching certificate. She is employed as a project manager by a large defense contractor at a naval shipyard and has worked there since September 2009, largely in a cleared position. (GE 1; Tr. 8-9, 20-24, 37, 89-90) She earns an annual salary of almost \$76,800. (AE E) She is well-regarded at work. (AE F) She has never married. She has no children of her own, but she is a licensed foster parent. (GE 1; AE J; AE Q)

The SOR concerns six delinquent debts, discussed below. Applicant's debts are established by her admissions and by credit reports in the record, from May 2020, February 2021, and February 2022, as well as a January 2020 credit report provided by Applicant after the hearing. (GE 3 at 3; GE 4 at 11-12, GE 2-GE 4; AE S at 5)

Applicant testified that her financial problems began in March 2019, when she was hit by a car while walking her dog. She said her student loans were in good standing at that point. She missed several months of work, and her student loans went into forbearance. She has been trying to work with her student loan provider since then. (Tr. 25)

SOR ¶¶ 1.a (\$93) and 1.b (\$537) are debts that are past due to unidentified medical creditors. (GE 2 at 2, GE 3 at 2) After Applicant's accident, she received a financial settlement of about \$100,000. She then was able to address her medical debts. (Tr. 30-32; AE C) She testified that she intended to pay certain medical debts first, such as the

\$537 debt at SOR ¶ 1.b, but that the creditor often assigned her payments to other debts. (Tr. 40-43) The settlement covered about \$40,600 in specific medical expenses, with a remainder of about \$59,000. (AE C) After addressing her medical debts, she then turned to other debts on her credit report. (Tr. 30-32, 40-43)

A post-hearing document reflected \$628 in medical debts with a collector. These debt were incurred from 2015, 2016, 2020, 2021, and 2022. (AE R) It is not clear if these debts are reflected in the SOR. They largely either pre-date the accident or are dated after the accident settlement.

SOR ¶ 1.e (\$405) is a debt that has been charged off by a money lender. Applicant also asserted that this debt has been paid, and this payment is reflected in a January 2020 credit report she provided. (Tr. 32, 55, 56-58; AE S at 6) Later credit reports show a \$200 past-due balance. (GE 2 at 7; GE 3 at 4)

SOR ¶ 1.f (\$4,612) is a debt placed for collection. (GE 4 at 12) She believes this debt has been paid off. (Tr. 33) A post-hearing document from January 2020 shows that this debt rose to \$5,212. (AE S at 5) It is not reflected on later credit reports. Applicant did not provide documentation that this debt is being resolved.

The two largest debts by far are Applicant's delinquent federal student loans, SOR ¶¶ 1.c (\$114,425) and 1.d (\$58,775), totaling \$173,200. (GE 2 at 6; AE S at 5) This is almost exactly the amount reflected in the post-hearing document she submitted detailing her student loans. (\$154,815 in principal and \$18,386 in interest, totaling \$173,201). (AE P) The most recent credit report in the record, from February 2022, shows that the accounts are in "Pays as Agreed" status, with no past-due amount. No payment amount due is reflected, however. (GE 2 at 6)

Applicant financed her graduate education and some of her certificates through student loans. She had a scholarship in college. She was working on paying them off until her accident in March 2019. Until then, her loans were in good standing. She then put her loans into forbearance status. (Tr. 24-26, 38, 44-45) Credit reports reflect that they became delinquent in about March 2020, but that they were also delinquent in 2018 and 2019. (GE 2 at 3-4).

Following the accident, Applicant was out of work for about four months, until July 2019, and she fell behind on her bills. She was on short-term disability before going back to work. (Tr. 26-27, 33-34; GE 1; AE B) At the time of her accident, she was making minimum payments on her loans to keep them current. (Tr. 36, 77)

AE A is a document from Applicant's loan-rehabilitation company, dated April 24, 2020. At that time, she owed \$154,314 in principal plus \$18,386 interest, and \$31,037 in collection costs, for a total of \$203,737. She was in discussions with the company but has had trouble figuring out who to contact. She had yet to formalize an agreement or put it into effect. (Tr. 34-35, 77-78) She hopes to have her loans forgiven. She applied for President Biden's student loan forgiveness program shortly before the hearing when it

was implemented. (Tr. 34-35, 69-70, 77-78, 85-88; AE O) (That program is now the subject of ongoing federal litigation and remains on hold).

At the time of the hearing, repayment of federal student loans had been on hold due to the COVID-19 pandemic under multiple Presidential Executive Orders since March 2020. Federal student loan payments remain paused until June 30, 2023. See <https://studentaid.gov/announcements-events/covid-19>.

Applicant said she is also working part-time to earn more income. She works as a substitute teacher and in sports therapy, providing therapy to children. Her income from those positions is limited. (Tr. 47-53, 75, AE G, AE H) She takes home about \$3,900 a month from her full-time job at the shipyard. (Tr. 59) She has about \$2,300 in checking and savings accounts combined. (Tr. 59-63) She has about \$55,000 in her company's retirement plan. (AE E) She rents her home and is looking to buy a house. (AE K, AE L, AE M, AE N) She recognizes that her student loans are problematic in that regard. (Tr. 78) Last year, she retained a credit repair company to dispute her debts. She paid them \$100 a month but soon realized she could do the work herself. She has also worked to cut unnecessary expenses. (Tr. 70-71)

Applicant has been a licensed foster parent for about six years. She often cares for as many as five foster children at a time. At the time of the hearing, she was caring for three foster children, ages 7, 10, and 16. (Tr. 64-70, 74-75; AE J) She is an active volunteer in her community. (AE I)

### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court has held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline for financial considerations is set out, in relevant part, in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
  
- (c) a history of not meeting financial obligations.

Applicant's delinquent student loans and other debts are established by her admissions and by credit reports in the record. AG ¶¶ 19(a) and 19(c) apply.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

Applicant's finances were significantly impacted after she was hit by a car in 2019. She missed several months of work and was on short-term disability. She incurred medical expenses and fell behind on other debts. She placed her student loans into forbearance but by early 2020 they were delinquent. The first prong of AG ¶ 20(b) therefore applies.

Applicant's medical debts were largely resolved through the \$100,000 financial settlement that she received after the accident, probably including the debts at SOR ¶¶ 1.a and 1.b. However, her student-loan debts remain, as does the debt at SOR ¶ 1.f. While payments have been paused under Executive Orders due to the pandemic, her student loans were delinquent before the Executive Orders and Applicant did not establish that she has undertaken responsible efforts to address them in the past, and she has yet to put forth a responsible plan for dealing with them now. Her student-loan debts now total over \$170,000. Her debts are ongoing, and they are not being resolved and are not under control. Other than as specified above, AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not fully apply to mitigate her significant financial debts.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation

and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant put forth significant whole-person evidence to consider. She is a dedicated foster parent, and she is working multiple jobs to make ends meet. She also is a valued employee at the shipyard and has been there for several years. She has earned a bachelor's degree and a master's degree, as well as several certificates. But she has not put forth a responsible plan to address her overwhelming federal student-loan debt, nor has she taken real steps to put any such plan into effect, such as by establishing a track record of steady payments. She did not provide sufficient evidence to mitigate the security concern shown by her delinquent debts. Overall, the record evidence leaves me with questions and doubts as to her eligibility for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a, 1.b, 1.e:	For Applicant
Subparagraphs 1.c, 1.d, 1.f:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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Braden M. Murphy  
Administrative Judge